

U.S. SENATE REPORT, 97-564
IMPLEMENTING LEGISLATION FOR THE CONVENTION ON THE MEANS OF
PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT, AND
TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

Calendar No. 829
97th CONGRESS - 2nd Session - SENATE REPORT No. 97-564
MISCELLANEOUS TARIFF, TRADE, AND CUSTOMS MATTERS
SEPTEMBER 21 (legislative day, SEPTEMBER 8, 1982)

The Committee on Finance, to which was referred the bill (H.R.4566) to reduce certain duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended to pass.

SUMMARY

H.R. 4566, as referred to the committee was ordered favorably reported with amendments which struck everything after the enacting clause and substituted the provisions described herein.

Title I.... Title II of the bill contains provisions implementing the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*.

Title III....

IMPLEMENTING LEGISLATION FOR THE CONVENTION ON THE MEANS OF
PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT, AND TRANSFER OF
OWNERSHIP OF CULTURAL PROPERTY

Purpose

This bill implements in domestic law the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). The Cultural Property Convention is an international agreement adopted by the United Nations Educational, Scientific and Cultural Organization on November 14, 1970. It establishes principles for the control of trade in archaeological and ethnological materials as well as certain other cultural material. Although the Senate unanimously gave its advice and consent to ratification in 1972, the Convention is not self-executing and it has not been ratified for lack of the domestic legal means necessary to carry out its obligations. The purpose of this bill is to provide that authority, thereby promoting U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that not only are of importance to the nations whence they originate, but also to a greater international understanding of our common heritage.

The bill - S. 1723, as amended by the committee and included in H.R. 4566 - implements the essential obligations of the Cultural Property Convention. These obligations generally are:

- (1) to prohibit the import of cultural material identified as stolen from an institution in another State Party (i.e., a party to the Convention), and to assist in its recovery if it is imported; and

(2) to apply specific import or other controls (upon the request of a State Party) to archaeological or ethnological materials specifically identified as comprising a part of a state's cultural patrimony that is in danger of being pillaged.

Except in certain emergency situations, the latter obligation normally will be met through ad hoc international arrangements. In form and substance, the bill substantially emulates H.R. 5643, implementing legislation passed by the House of Representatives in the 95th Congress (See H.Reg. No. 95-615, 95th Cong., 1st Sess. (1977)). Following the short title provided in section 201, section 202 of the bill sets forth definitions for the important terms of art in the legislation.

Sections 203-205 and 207 implement article 9 of the Convention.

These sections authorize the President, subject to certain conditions and limitations, to enter into bilateral or multilateral agreements or to invoke emergency import regulations to control the importation of archaeological or ethnological materials that have been illegally exported from another State Party or are in danger thereof. The exercise of this authority is contingent upon a request from a State Party, the cultural patrimony of which is in jeopardy from pillage. The agreements are to serve as the basis for a concerted effort to thwart the pillage.

Section 208 implements article 7 of the Convention. This section implicitly declares illegal the importation into the United States of cultural property identified as appertaining to the inventory of a museum, a religious or public monument, or a similar institution in a state Party. This provision creates a juridical basis for actions, authorized in section 210 to recover the property.

Section 206 establishes a Cultural Property Advisory Committee comprised of representatives of the general public, and experts from the academic, museum, and art dealer communities. It is structured similarly to trade advisory committees established by section 135 of the Trade Act of 1974, and will advise the President concerning the requests of State parties for import controls and the scope and operation of such controls.

Sections 210-211 subject to seizure and forfeiture any articles imported in violation of sections 207 or 208. Pursuant to **section 209**, however, U.S. museums or similar institutions may retain the articles, subject to certain protections, until their final disposition is determined. Under **section 212**, certain articles are excluded from any controls authorized by this bill because they are entering this country solely for purposes of exhibition or because they have been held in this country for a significant period without challenge to the legitimacy of their procurement.

Sections 213-215 are administrative in nature. As in the case of the earlier-passed H.R. 5643, this bill reflects the approach to illicit trade in art adopted by the Congress in the *Pre-Columbian Art Act of 1972* (Pub. L. No. 92-587) with regard to a particular category of artifacts. The bill takes into account the reservation and understandings accompanying the grant by the Senate in 1972 of its advice and consent to ratification of the Convention. Further, it neither pre-empts State law in any way nor modifies any Federal or State remedies that may pertain to articles to which the provisions of this bill apply.

REASONS FOR THE BILL

Background

The increasing demand in recent years for archaeological and ethnological materials and antiquities has spurred, in most experts' opinions, a great increase in the international exchange of such materials. But unlike other commodities, increased or new production of these articles

cannot rise to meet the demand. Instead, the increased supply results from the sales of known artifacts and those newly recovered from archaeological sites. The unique origin and character of these articles raises serious trade issues distinct from the normal concerns of the reciprocal trade agreements program or U.S. trade law.

No detailed data exist that provide reliable insights into either the precise nature or magnitude of trade in cultural property. As one expert points out, "It is easy to understand why we have little information. Much about the art trade simply is not knowable." (Bator: An Essay on the International Trade in Art 34 Stan. L. Rev. 275, 291 [1982]). Professor Bator suggests that this is because of the vast number of undiscovered or unidentified objects; the lack of resources among many nations to develop their cultural resources; and the secret nature of much of the trade.

Nevertheless, the testimony to the committee on S. 1723 confirmed the evidence given in various Congressional fora in recent years and in many learned articles: the demand for cultural artifacts has resulted in the irremedial destruction of archaeological sites and articles, depriving the situs countries of their cultural patrimony and the world of important knowledge of its past. Further, because the United States is a principal market for articles of archaeological or ethnological interests and of art objects, the discovery here of stolen or illegally exported artifacts in some cases severely strains our relations with the countries of origin, which often include close allies. As stated by the Department of State in commenting on S. 1723:

The legislation is important to our foreign relations, including our international cultural relations. The expanding worldwide trade in objects of archaeological and ethnological interest has led to wholesale depredations in some countries, resulting in the mutilation of ceremonial centers and archaeological complexes of ancient civilizations and the removal of stone sculptures and reliefs. In addition, art objects have been stolen in increasing quantities from museums, churches, and collections. The governments which have been victimized have been disturbed at the outflow of these objects to foreign lands, and the appearance in the United States of objects has often given rise to outcries and urgent requests for return by other countries. The United States considers that on grounds of principle, good foreign relations, and concern for the preservation of the cultural heritage of mankind, it should render assistance in these situations.

Witnesses before the committee also pointed out that the interest of the United States in this matter extends beyond our import market and our interest in fostering the careful study of foreign cultures. In recent years, the increasing interest in native American, Hawaiian, and Alaskan artifacts concomitantly has spurred the pillaging of U.S. historic sites. The destruction of such sites and the disappearance of the historic records evidenced by the articles found in them has given rise to a profound national interest in joining other countries to control the trafficking of such articles in international commerce.

These concerns led the United States in the late 1960's to participate in negotiations, sponsored by the United Nations Educational, Scientific, and Cultural Organization (UNESCO), to achieve international agreement on the nature and means to address the problem.

The *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* resulted from these negotiations. The sixteenth General Conference of Unesco adopted the Convention on November 14, 1970, by a vote of 77 to 1, with 8 abstentions. It entered into force (but not with respect to the United States) on April 24, 1972. Forty-five countries are now parties to the Convention. As described by the Committee on Foreign Relations, the Convention generally encompasses the following obligations:

The principle purpose of the convention is to combat the increasing illegal international trade in national art treasures, which in some countries has led to wholesale pillaging. To this end,

the parties to the convention undertake to protect their own cultural heritage and to establish an export certificate for cultural property designated by each country as being of importance. They are also required to prohibit the import of cultural property stolen from museums, public monuments, or similar institutions and to take appropriate steps, upon request to recover and return such cultural property provided that the state of origin is prepared to pay just compensation to an innocent purchaser or a person who has valid title. The parties further agree to take what measures they can, consistently with existing national legislation, to prevent museums and similar institutions within their territory from acquiring cultural property originating in another country which has been illegally exported after entry into force of the treaty.

Senate Committee on Foreign Relations, Exec. Rep. No 92-29, 92d Cong., 2d Sess. 1 (August 8, 1972).

Where a State Party's cultural patrimony is in jeopardy from pillage of identified types of archaeological or ethnological materials, the parties agree to apply import controls or other appropriate corrective measures. After consideration by the committee on Foreign Relations, which found no opposition to the Convention, the Senate unanimously gave its advice and consent to ratification on August 11, 1972. The senate's action included one reservation and six understandings. One understanding made clear that the Convention is not self-executing and will have no domestic legal effect except as defined by implementing legislation.

The Department of State first proposed implementing legislation in 1973 to the 93rd Congress, and again in 1975 to the 94th Congress. The House of Representatives approved an amended version of this legislation (H.R. 5643) in 1977, but the bill was not reported by the Committee on Finance. Legislation again was introduced in the 96th Congress, but no action was taken after hearing.

S. 1723 is the successor in this Congress to those earlier efforts. The Subcommittee on International Trade held a hearing on July 22, 1982, and took oral and written testimony from the Administration and representatives from the academic and art dealers' community. This will reflect amendments subsequently agreed to by all of these groups. The Committee adopted the bill, as amended, without objection as part of H.R. 4566 on September 15, 1982.

SECTION-BY-SECTION ANALYSIS

Section 201 This section provides that this title may be cited as the "*Convention on Cultural Property Implementation Act*."

Section 202 This section defines the essential terms of art employed in title II. Only the term "archaeological or ethnological materials of the State Party" requires fuller explication here. The Convention does not define this terms. The definition is intended by the committee to reflect the understanding of U.S. negotiators that the application of import restrictions under agreements entered into under **section 203** or emergency actions taken under **section 204** is limited to a narrow range of objects possessing certain characteristics.

As defined under **section 202(2i)**, "*archaeological material*" includes any object which is of cultural significance, which is at least 250 years old, and which normally has been discovered through scientific excavation, clandestine or accidental digging, or exploration on land or under water. Archaeological objects are usually found underground or under water, or are discovered through excavation, digging, or exploration. However, the definition would also include objects which are typically regarded as archaeological (for example, frescoes from buildings), without regard to whether the particular objects are discovered by excavation or exploration. The committee believes that the 250-year threshold age requirement ensures that

the controls authorized by this Act will be applied to objects of significantly rare archaeological stature, which encompasses a range of important artifacts that are of a more recent vintage. For example, archaeological sites of importance in understanding the settlement of North America contain objects not greatly exceeding 250 years in age.

"*Ethnological material*" includes any object that is the product of a tribal or similar society, and is important to the cultural heritage of a people because of its distinctive characteristics, its comparative rarity, or its contribution to the knowledge of their origins, development or history. While these materials do not lend themselves to arbitrary age thresholds, the committee intends this definition, to encompass only what is sometimes termed "primitive" or "tribal" art, such as masks, idols, or totem poles, produced by tribal societies in Africa and South America. Such objects must be important to a cultural heritage by possessing characteristics which distinguish them from other objects in the same category providing particular insights into the origins and history of a people. The committee does not intend the definition of ethnological materials under this title to apply to trinkets and other objects that are common or repetitive or essentially alike in material design, color, or other outstanding characteristics with other objects of the same type, or which have relatively little value for understanding the origins or history of a particular people or society. An agreement or emergency action would also not apply to ethnological material produced by more technologically advanced societies. The Cultural Property Advisory Committee, as provided in section 206, will render the expert advice necessary to understand these terms in the context of particular cases.

Sections 203-205 and 207 These sections implement Article 9 of the Cultural Property Convention, which states:

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other State Parties who are affected The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each state concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.

In describing what is contemplated by this provision, the Committee on Foreign Relations stated that at the UNESCO 16th General Conference, the U.S. delegate said before voting that in his view the procedures in Article 9 for determination of concrete measures to deal with pillage of archaeological or ethnological materials will permit the states affected to determine by mutual agreement the measures that can be effective in each particular case to deal with the situation and to accept responsibility for carrying out those measures on a multilateral basis. Two examples of such situations are (1) the case in which the remains of a particular civilization are threatened with destruction or wholesale removal as may be true of certain pre-Columbian monuments, and (2) the case in which the international market for certain items has stimulated widespread illegal excavations destructive of important archaeological resources. *Exec. Rep. No. 92-29, 92d Cong., 2d Sess. 5(1972)*. The latter two situations are addressed in **sections 204 and 203**, respectively.

Sections 203(a) and (c) together comprise the substantive grant of authority for the President to enter into bilateral or multilateral agreements intended to provide U.S. cooperation towards protecting from the danger of pillage the archaeological or technological materials comprising the cultural patrimony of another State Party. The President, with the advice of the Advisory Committee established in **section 206**, must make several determinations prior to concluding such as agreement.

In general, these are intended to ensure that the requesting nation is engaged in self-help measures and that U.S. cooperation, in the context of a concerted international effort, will significantly enhance the chances of their success in preventing the pillage. Specifically, after a request by the victimized nation, the President may enter into agreements to apply the import controls authorized by **section 207** if he determines the following:

- (1) The cultural patrimony of the State Party is in jeopardy from pillage of its archaeological or ethnological materials;
- (2) the State party has taken measures consistent with the Convention to protect its cultural patrimony;
- (3) application of import restrictions in the context of a concerted international effort, to archaeological or ethnological material of the State Party would be of substantial benefit in deterring a serious situation of pillage, and less drastic remedies are not available; and
- (4) application of import restrictions in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific and educational purposes.

The Committee intends these limitations to ensure that the United States will reach an independent judgment regarding the need and scope of import controls. That is, U.S. actions need not be coextensive with the broadest declarations of ownership and historical or scientific value made by other nations.

U.S. actions in these complex matters should not be bound by the characterization of other countries, and these other countries should have the benefit of knowing what minimum showing is required to obtain the full range of U.S. cooperation authorized by this bill.

The concept that U.S. import controls should be part of a concerted international effort is embodied in Article 9 of the Convention and carried forward in **section 203**. In previous years' consideration of various proposals for implementing legislation, a particularly nettlesome issue was how to formulate standards establishing that U.S. controls would not be administered unilaterally. The committee believes that the language now adopted, which amends that contained in S. 1723 and which is agreeable to all private sector parties that have contributed actively to the Committee's consideration of the bill, satisfies the twin interests of obtaining international cooperation while achieving the goal of substantially contributing to the protection of cultural property from further destruction.

The bill reflects the principle of participation in a concerted international effort in the following manner. Under **section 203(a)(1)(C)(i)**, as a precondition to entering into an agreement the President must determine that import restrictions, "if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations (whether or not State Parties) individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage...." **Section 203(c)(1)** then specifically denies the President the authority to enter into an agreement unless these conditions are satisfied.

The determination of what countries have a significant import trade in the material that is in jeopardy of being pillaged, and whether the effort will help to ameliorate the problem is within the discretion of the President. These decisions inherently preclude precise determination, given the goals of the Convention and the uncertain factual basis of them. For example, whether a country has a "significant import trade" may be a function of not only value of imports, but type and historic trading patterns.

Therefore, a measure of Presidential judgment is required. Nevertheless, the committee believes the standards set forth in this section, together with active contributions by the Advisory Committee to the Administration's decision-making process, will ensure that the President will enter into agreements only in accord with the purposes and standards of the bill. It is the Committee's further intent that the formula measuring the presence and worth of a "concerted international effort" not be so mechanical as to preclude the consultation of agreements under section 203(a) where the purposes of the legislation nevertheless would be served by doing so. Therefore, the Committee adopted in **section 203(c)(2)** a limited exception to the general requirement laid down by **section 203(c)(1)**. This exception allows the President, once he has identified the significant importing nations the participation of which ordinarily would be expected to comprise a concerted international effort, to enter into agreements without the participation of all such nations. To do so, he must determine with regard to particular such nationals that they are not implementing similar import controls but

(A) such restrictions are not essential to deter a serious situation of pillage, and

(B) the application of the import restrictions set forth in **section 207** in concert with similar restrictions implemented, or to be implemented by other national (whether or not State Parties) individually having a significant import trade in such material would be of substantial benefit in deterring a serious situation of pillage.

The essential nature of a concerted international effort is thus preserved, while the president is allowed to move forward without the full participation of nations the contributions of which are not essential to amelioration of the problem.

Section 203 contains other limitations on the President's agreement-making authority.

Subsections (b) and (e) limit the term of the agreements to five years, with the possibility of extension for additional five-year periods if, after an opportunity for public comment and Advisory Committee review, the President determines that the circumstances warrant an extension.

Further, under **subsection (d)** the President must suspend an agreement if he determines that the circumstances originally constituting the basis for its entry into force no longer obtain.

Section 204 authorizes the President to impose the import restrictions set forth in **section 207** on archaeological or ethnological materials of any state Party if he determines that an emergency condition exists with respect to such material. The emergency restrictions may not apply for more than 5 years, although they may be extended for one additional period of not more than 3 years if the emergency persists. **Subsection (a)** defines "emergency condition" as a situation in which the archaeological or ethnological materials of a State Party is one of the following:

(1) newly discovered material important for understanding the history of mankind and in jeopardy from pillage, dismantling, dispersal, or fragmentation;

(2) identifiable as coming from a site of high cultural significance in jeopardy from pillage, dispersal, or fragmentation which is or threatens to be of crisis proportions; or

(3) part of the remains of a particular civilization, the record of which is in jeopardy from pillage, dismantling, dispersal or fragmentation which is or threatens to be of crisis proportions.

In addition, the President must determine that application of temporary import restrictions would reduce the incentive for such pillage, dismantling, dispersal, or fragmentation in whole or in part.

Beside time limitations, **subsection (c)** imposes two limitations on the emergency authority. First it prohibits the President from implementing **section 204** unless the State Party made a request to the United States as in **section 203(a)** for assistance under Article 9 of the Convention. However, the State Party need not indicate in its request that an emergency condition exists as a necessary precondition to the use of the emergency authority, although the information provided in its request must support such a finding. Second, before making his decision on emergency action, the President must consider the views and recommendations of the Advisory Committee on the use of the emergency authority if the committee has submitted its report to him within 90 days after the President provides it information on the request of the State Party.

The information provided by the President should include any indication by the State Party of an emergency situation.

Section 204(c)(4) provides the President with additional means to continue the emergency import restrictions after an agreement is concluded. This subsection provides that when an agreement is concluded under section 203 or the Senate has given its advice and consent to a treaty, the President may continue to apply the emergency import restrictions to the covered articles, as originally promulgated or as modified, for a period lasting until their expiration under the agreement or treaty. In order to carry out the import restrictions contemplated by agreements entered into pursuant to section 203 or by the emergency authority granted by section 204, the specific types of archaeological or ethnological materials that will be restricted must be identified.

Section 205 authorizes the Secretary of the Treasury to do so by regulation. The Secretary will consult with the Director of the United States Information Agency before promulgating such a lists, as the latter is responsible for servicing the work of the Advisory Committee that is expected to contribute heavily to the composition of the list. The Secretary may list such material by type or other classification but each such listing must be sufficiently specific and precise to serve the two purposes of ensuring that

- (1) the import restrictions are applied only to material covered by the agreement or emergency action (that is, pillage is creating the jeopardy to the cultural patrimony of the State Party found to exist under section 203 or section 204); and
- (2) importers and other interested persons are provided fair notice of what archaeological or ethnological material is subject to import restrictions.

Section 207 bars the importation of any article designated for restriction under section 205 unless it is accompanied by proper export documentation from the originating State Party, or unless satisfactory evidence is adduced that the export occurred either before the designation of more than 10 years prior to the entry and the importer involved or a "related person" did not acquire an interest in the article prior to one year before entry.

Section 207(d) defines "related persons" for this purpose. The committee believes these requirements strike a fair balance between the authority necessary to avoid circumvention of and to enforce "related persons" to this end. The committee believes these requirements strike a fair balance between the authority necessary to avoid circumvention of and to enforce controls this Government undertakes to implement, and the desire to lessen the burden of such restrictions on normal art trade and on innocent purchasers of art. Entries failing to meet the

requirements of this section are subject to seizure and forfeiture pursuant to **section 210**. Indeed, even if an item is permitted to enter the country, it may be seized under **section 210** if it was subject to seizure had the facts been known. In order to obtain entry in the first instance, a consignee must present "satisfactory evidence" that these requirements are satisfied. Under **section 207(c)**, such evidence in general consists of a declaration under oath by the consignee attesting to the necessary facts and statements by the consignor to the same effect together with the reasons upon which he bases these statements. The committee understands the latter requirement of providing reasons to mean that the consignor must present to the Customs officer a substantial basis for his assertions in the statement. Although this section thus recognizes the difficulties in obtaining sworn declarations by foreign consignors, it requires more than a superficial meeting of the requirements of "satisfactory evidence."

Section 206 The exercise by the President of the authorities provided in **sections 203-205** will require substantial input from knowledgeable representatives of the private sector. **Section 206** establishes a Cultural Property Advisory Committee for this purpose.

The eleven members of the Advisory Committee will include two members representing the interests of museum, three archaeologists, anthropologists, or experts in related fields; three persons representing the interests of art dealers; and three representatives of the general public. While following the same division of interests, the committee rejected the formulation of S. 1723 of enumerating specific associations, each of which would nominate a few names from which the President would be required to select his appointment. This approach raises a serious question of unconstitutional infringement of the President's appointment power. Of equal concern would be the deviation from the established practice of creating trade advisory committees adopted in section 135 of the Trade Act of 1974 (19 U.S.C. 2155). While the associates listed in S.1723 doubtless will provide a rich source of qualified persons for consideration by the President, the committee concluded that to avoid any appearance of unfairness in the appointments process, the pool of qualified nominees should not be arbitrarily restricted to certain private groups.

In other respects also, the committee chose to follow the established structure of trade advisory committees under **section 206(b)(3)**, appointments will be on a renewable 2-year basis. **Subsection (h)** ensures that in operation the Advisory Committee will conform to the strictures of the Federal Advisory Committee Act (5 U.S.C. app. I, sec. 1 et seq).

Subsection (c) would establish a limited statutory exception to the Freedom of Information Act, in addition to the exemptions already contained therein. The committee believes this exception is warranted because of the limited nature, the restricted scope of Advisory Committee functions, and the nature of the information involved which, if released could adversely affect the President's ability to negotiate agreements authorized by this Act. As the Advisory Committee's role is limited to pre- negotiation determinations, it is expected that this provision will apply to only a small volume of information.

Subsection (j) confirms that private sector Advisory Committee members are not expected on the basis of this legislation alone, to have a role in negotiating agreements to which this bill pertains.

Section 206(d) provides that a majority of the eleven Advisory Committee members shall constitute a quorum, and that it may act by majority vote of those present and voting. As the Advisory Committee is required to adhere to certain time limits if its advice is to be considered by the President, this provision will assist it in proceeding with business in the absence of several members.

Section 206(e) establishes the United States Information Agency as the secretariat of the Advisory Committee. Other agencies, particularly the Departments of State, Justice, the Treasury, and the General Services Administration are expected to facilitate the Advisory Committee's operations in every reasonable way.

Section 206(f) and (g) set forth the substantive responsibilities of the Advisory Committee. Under **subsection (f)**, it will report on requests for assistance by other state Parties and whether agreements or emergency measures would be the proper response. The reports are to contain substantive analyses and recommendations, and any dissents. The Advisory Committee will also review existing agreements and emergency controls and report on the need for extending or suspending such agreements or emergency controls. Through this mandate, the committee believes the Advisory Committee will play a prominent role in achieving the effective implementation of this bill.

Section 208 Section 208 implements article 7(b)(i) of the Convention, which requires State Parties to undertake to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution.

Section 208 prohibits the importation of any article of cultural property stolen from the inventory of a museum or religious or secular monument or similar institution. "Cultural property" is defined to include the categories of articles listed in article 1 of the Convention, whether or not the article is specifically designated by the State Party for this purpose. The term thus is broader than but inclusive of "archaeological or ethnological material." This provision will apply to items of cultural property stolen from a broad range of institutions and public monuments in State Parties. In addition to public museum, the language is intended to cover cathedrals, temples, shrines, and other such edifices or sites open for public visitation or scientific study. Examples include the Wailing Wall in Jerusalem; Pompeii, Italy; Teotihuacan, Mexico; Angkor Wat, Cambodia; the Colosseum, Rome; Arc de Triomphe, Paris, etc. Covered are facades, murals, internal and external ornamentation, statuary, paintings, objects of artistic or religious significance, etc. affixed to, or located in or on such edifices or sites.

An article of cultural property would be covered by **section 208** if it were listed in the inventory of a particular institution or if it were affixed to or located in or on an edifice or site which itself is included in an inventory. The committee intends the language "documents as appertaining to the inventory" to be read broadly in the context of the actual practices by which nations identify and maintain their cultural treasures, not only in museum but also those associated with monuments. "Documented," for example, is intended to cover photographic and other types of evidence in addition to formal museum records. Further, "inventory" should be broadly construed where public and religious monuments and similar institutions are concerned. **Section 208** takes effect with respect to any article stolen after the effective date of this act or after the date the convention enters into force for the State Party, whichever is later. This is without regard to whether or not the United States has an agreement under **section 203** or has taken emergency action under **section 204** to restrict importation of archaeological or ethnological material from that State Party.

Section 209 Section 209 provides for temporary retention of any archaeological or ethnological material or article of cultural property in a public museum or other cultural or scientific institution in the United States pending a final determination of whether the material or article was imported in violation of **sections 207 or 208**. The Secretary of the Treasury will permit retention upon application by an institution if he finds that the institution will take

sufficient safeguards to protect the material or article and will post sufficient bond to insure its return to the Secretary.

Sections 210-211 Sections 210 and 211 contain the provisions for seizure, forfeiture, and disposition of archaeological or ethnological materials or of stolen articles of cultural property imported in violation of **sections 207 or 208**. **Section 210** contains the seizure and forfeiture provisions and the conditions for return to the State Party of protected material or articles which are forfeited to the United States. Subsection (a) provides that any designated archaeological or ethnological material or article of cultural property imported in violation of **section 207 or 208** will be subject to seizure and forfeiture. All provisions of law relating to seizure, forfeiture, and condemnation for violation of the customs law apply insofar as they are applicable to and not inconsistent with provisions of this Act.

The Committee agreed to amend S. 1723 to allow both summary and judicial forfeiture proceedings. It accepted the argument of the Administration and others that many articles potentially subject to forfeiture are likely to be small in value, and neither the consignee nor the Government will wish to bear the costs of a judicial proceeding concerning them. Further, the limited resources of the courts should not be diverted to these minor cases if the parties do not wish to undergo such proceedings. Finally, anyone seeking judicial forfeiture may do so by posting a small bond; therefore, eliminating the requirement of judicial forfeiture proceedings does not abridge any rights or opportunities of the defendant [*sic*]. **Subsection (b)** specifies that any archaeological or ethnological material imported in violation of **section 207** and forfeited to the United States must first be offered for return to the State Party. The object will be returned if the State Party bears the expenses of return and delivery and complies with any other requirements related to the return prescribed by the Secretary of the Treasury. Otherwise, the object will be disposed of as prescribed for articles forfeited for violation of the customs law, unless the claimant establishes valid title to the material and that he is a bona fide purchaser for value of it.

Subsection (c) specifies that any action for forfeiture of an article of cultural property imported in violation of **section 208** is subject to the following alternative resolutions:

1. If the claimant establishes valid title as against the institutions from which the article was stolen, forfeiture will not be decreed unless the State Party requesting its return agrees to pay the claimants holding valid title just compensation.
2. If the claimant does not establish valid title but establishes his purchase for value without knowledge or reason to believe the article was stolen, then forfeiture will not be decreed unless (a) State Party to which the article is to be returned pays that innocent purchaser and amount equal to what he paid for the article, or (b) the United States establishes that the State Party as a matter of law or reciprocity would in similar circumstances recover and return an article stolen from a United States institution without requiring payment of compensation. Implementation of article 7(b) of the Convention affects neither existing remedies available in State or Federal courts nor laws prohibiting the theft and the knowing receipt and transportation of stolen property in interstate and foreign commerce (e.g., National Stolen Property Act, Title 18, U.S.C. Sections 2314-15), including the possible recovery of stolen property for the rightful owner in the courts without payment of compensation.

Article 7(b)(ii) of the Convention specifically requires that an offer of just compensation be made to a person holding valid title to, or to an innocent purchaser of, an article of cultural property by the State Party requesting its return. However, innocent purchasers who do not acquire valid title as against the true owner may not be entitled to compensation under applicable municipal laws in the United States.

Consequently, the fourth understanding adopted by the Senate in its advice and consent to ratification of the Convention, as reflected in **section 210(c)**, provides that the United States is prepared to return recovered stolen cultural property without payment of compensation if it establishes before the court as a matter of law or reciprocity that the claiming State Party would in similar circumstances recover and return an article stolen from an institution in the United States without requiring payment of compensation. It is considered that reciprocity would have to be shown by a Government decree, proclamation, written commitment, written opinion, or other such evidence.

Section 211 establishes the evidentiary requirements for any forfeiture proceeding under this Act in which archaeological or ethnological material or an article of cultural property is claimed by any person. Notwithstanding section 615 of the Tariff Act of 11930, the burden of proof will be on the United States in such proceedings to establish that material subject to **section 207** has been designated by the Secretary of the Treasury under **section 205** as covered by an agreement with a State Party or by an emergency action. In the case of an article of cultural property, the United States must establish that the article appertains to the inventory of a museum or similar institution in a State Party and was stolen from that institution after the effective date of this Act or after the date the Convention entered into force for the State Party concerned, whichever is older.

Section 212 Section 212 exempts archaeological or ethnological material or article of cultural property from the provisions of the Act under any of the following circumstances:

1. Material or articles imported into the United States for temporary exhibition of display are exempt if they are immune from seizure under judicial process pursuant to 22 U/S/C/ 2459. To achieve such immunity, the President or his designee must have determined prior to importation of the object that it is of cultural significance and that its temporary exhibition or display within the United States is in the national interest, and he must have published notice to this effect in the Federal Register.
2. Material or articles held at least three years in the United States by a public institution that openly procured, displayed, or publicized its possession of the objects.
3. Material or articles held in the United States for at least 10 consecutive years from the date of the importation and (a) exhibited for at least 5 years during that period in a recognized museum, religious, or secular monument, or similar institution, or (b), if (a) does not apply, the State Party received or should have received fair notice through publication or other means to be prescribed by regulation, of its location within the United States during this period.
4. If none of the above apply then the material or articles have been in this country for at least 20 years and the claimant purchased them without awareness of their illegal origin. The purpose of these exceptions is to provide a time certain when an adequate opportunity to identify and to recover illicitly traded art will have been afforded, and rights to objects can be settled.

Section 213 Section 213 authorizes the Secretary of the Treasury to prescribe rules and regulations as necessary and appropriate to carry out the act.

Section 214 Section 214 provides for custom officers to enforce the Act in the United States customs territory and in the Virgin Islands. The President will designate persons to enforce the act in other United States territories or areas outside the customs territory or Virgin Islands.

Section 215 Section 215 provides for the act to take effect on the 90th day after enactment, or on a prior date after enactment that the President prescribes and publishes in the Federal Register if he has appointed the initial members of the Advisory Committee. The President may appoint the Advisory Committee members any time after the date of enactment of this act.